

# HOUSE . . . . . No. 403

By Mr. Fresolo of Worcester, petition of John P. Fresolo and others that provision be made for binding arbitration for fire fighters and police officers. Public Service.

## The Commonwealth of Massachusetts

### PETITION OF:

John P. Fresolo  
SEIU - 5000 NAGE

Joan M. Menard

In the Year Two Thousand and Five.

AN ACT PROVIDING FOR BINDING ARBITRATION FOR FIRE FIGHTERS AND POLICE OFFICERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 If an employee organization duly recognized as representing  
2 the firefighters or police officers of a city, town or district is  
3 engaged in an impasse with said city, town or district which has  
4 continued for thirty days after the publication of the fact-finders  
5 report pursuant to section nine of chapter one hundred and fifty E  
6 of the General Laws, or, if the parties have mutually waived the  
7 fact-finding provisions contained in said section nine of said  
8 chapter one hundred and fifty E, said employee organization shall  
9 petition the board to make an investigation. If, after an investiga-  
10 tion, the board determines that:

11 1. the requirements of section nine of said chapter one hundred  
12 and fifty E have been complied with in good faith by the  
13 employee organization;

14 2. thirty days have passed since the date of publication of the  
15 fact-finding report pursuant to said section nine;

16 3. the proceedings for the prevention of any prohibited prac-  
17 tices have been exhausted, provided that any such complaints  
18 have been filed with the commission prior to the date of the fact-  
19 finders report; and

20 4. an impasse exists, the board shall notify the employer and  
21 the employee organization that the issues in dispute shall be  
22 resolved by a three-member arbitration panel, or when the parties  
23 mutually agree, the board shall select a single arbitrator in lieu of  
24 the arbitration panel.

25 Said panel shall be comprised of three arbitrators, one selected  
26 by the employee organization, and a third impartial arbitrator, who  
27 shall act as chairman of the panel, who shall be selected by the  
28 two previously selected arbitrators. In the event that either party  
29 fails to select an arbitrator or for any reason there is a delay in the  
30 naming of an arbitrator, or if the arbitrators fail to select a third  
31 arbitrator within the time prescribed by the board, the board shall  
32 appoint the arbitrator or arbitrators necessary to complete the  
33 panel, which shall act with the same force and effect as if the  
34 panel had been selected without intervention of the board.

35 In the event that the parties mutually elect to use a single arbi-  
36 trator, selected by the board, the parties shall immediately request  
37 the board to appoint said arbitrator, who shall act with the same  
38 force and effect as if a three member panel had been selected by  
39 the parties.

40 The single arbitrator or the arbitration panel acting through its  
41 chairman, shall conduct a hearing within ten days after the date of  
42 appointment of its chairman, at a place within the locality of the  
43 municipality involved, where feasible. The chairman shall give at  
44 least seven days notice in writing to each of the other arbitrators.  
45 The chairman or single arbitrator shall give like notice to the rep-  
46 resentative of the municipal employer and employee organizations  
47 of the time and place of such hearing.

48 The single arbitrator or chairman shall preside over the hearing  
49 and shall take testimony. Upon application and for good cause  
50 shown, a person, labor organization, or governmental unit having  
51 substantial interest therein may be granted leave to intervene by  
52 the arbitration panel. The proceedings shall be informal. Any oral  
53 or documentary evidence and other data deemed relevant by the  
54 arbitration panel or single arbitrator may be received into evi-  
55 dence. The arbitrators shall have the power to administer oaths  
56 and to require by subpoena the attendance and testimony of wit-  
57 nesses, the production of books, records, and other evidence  
58 relative to or pertinent to the issues presented to them for determi-

59 nation. If any person refuses to obey a subpoena, or refuses to be  
60 sworn or to testify, or if any witness, party, or attorney is guilty of  
61 any contempt while in attendance at any hearing, the arbitration  
62 panel or single arbitrator may, or the district attorney if requested,  
63 shall invoke the aid of the superior court within the jurisdiction in  
64 which the hearing is being held, which court shall issue an appro-  
65 priate order.

66 A record of the proceedings shall be kept, and the chairman or  
67 single arbitrator shall arrange for the necessary recording service.  
68 Transcripts may be ordered at the expense of the party ordering  
69 them, but the transcripts shall not be necessary for an award by  
70 the panel or single arbitrator. The hearing may be continued at the  
71 discretion of the panel or single arbitrator and shall be concluded  
72 within forty days from the time of commencement. At the conclu-  
73 sion of the hearing, each party shall submit a written statement  
74 containing its last and best offer for each of the issues in dispute  
75 to the panel or single arbitrator, who shall take said statements  
76 under advisement. Within ten days after the conclusion of the  
77 hearing, a majority of the panel, or the single arbitrator, shall  
78 select as the last and best arbitration award either the employer's  
79 written statement of its last and best offer, the employee organiza-  
80 tion's written statement of its last and best offer, or the recommen-  
81 dations of the fact-finder, if a fact-finding report and  
82 recommendations have been issued, and immediately shall give  
83 written notice of the selection to the parties. The selection shall be  
84 final and binding upon the parties and upon the appropriate leg-  
85 islative body. Within thirty calendar days of the last and best offer  
86 selection and award, the impartial chairperson of the arbitration  
87 panel or, the single arbitrator, shall issue a written opinion inclu-  
88 sive of an analysis of all statutory factors applicable to the pro-  
89 ceedings.

90 At any time before the rendering of an award, the chairman of  
91 the arbitration panel or single arbitrator, if he is of the opinion that  
92 it would be useful or beneficial to do so, may remand the dispute  
93 to the parties for further collective bargaining for the period not to  
94 exceed three weeks and notify the board of the remand. If the dis-  
95 pute is remanded for further collective bargaining the time provi-  
96 sions of this act shall be extended for a time period equal to that  
97 of the remand.

98 In the event that the representatives of the parties mutually  
99 resolve each of the issues in dispute and agree to be bound accord-  
100 ingly, said representatives may, at any time prior to the final deci-  
101 sions by the panel, or single arbitrator, request that the arbitration  
102 proceedings be terminated, the panel, acting through its chairman  
103 or single arbitrator, shall terminate the proceedings.

104 The factors among others, to be given weight by the arbitration  
105 panel or single arbitrator in arriving at the decision shall include:

106 (1) The financial ability of the municipality to meet costs. Such  
107 factors which shall be taken into consideration shall include but  
108 not be limited to: (a) the city, town, or district's state reimburse-  
109 ments and assessments; (b) the city, town, or district's long and  
110 short term bonded indebtedness; (c) the city, town, or district's  
111 estimated share in the metropolitan district commission deficit;  
112 (d) the city, town, or district's estimated share in the Massachu-  
113 setts Bay Transportation Authority's deficit; and (e) consideration  
114 of the average per capita property tax burden, average annual  
115 income of members of the community, the effect any accord by  
116 the panel or single arbitrator might have on the respective prop-  
117 erty tax rates of the city or town.

118 (2) The interests and welfare of the public.

119 (3) The hazards of employment, physical, educational and  
120 mental qualifications, job training and skills involved.

121 (4) A comparison of wages, hours and conditions of employ-  
122 ment of the employees involved in the arbitration proceedings  
123 with the wages, hours and conditions of employment of other  
124 employees performing similar services and with other employees  
125 generally in public and private employment in comparable com-  
126 munities.

127 (5) The decisions and recommendations of the fact-finder, if  
128 any.

129 (6) The average consumer prices for goods and services, com-  
130 monly known as the cost of living.

131 (7) The overall compensation presently received by the  
132 employees, including direct wages and fringe benefits.

133 (8) Changes in any of the foregoing circumstances during the  
134 pendency of the arbitration proceedings.

135 (9) Such other factors, not confined to the foregoing, which are  
136 normally or traditionally taken into consideration in the determi-

137 nation of wages, hours and conditions of employment through  
138 voluntary collective bargaining, mediation, fact-finding, arbitra-  
139 tion or otherwise between parties, in the public service or in pri-  
140 vate employment.

141 (10) The stipulation of the parties.

142 Any determination or decision of the arbitration panel or single  
143 arbitrator if supported by material and substantive evidence on the  
144 whole record shall be binding upon the parties and may be  
145 enforced at the instance of either party, the single arbitrator or the  
146 arbitration panel in the superior court in equity, provided however,  
147 that the scope of arbitration in police matters shall be limited to  
148 wages, hours, and conditions of employment and shall not include  
149 the following matters of inherent managerial policy: the right to  
150 appoint, promote, assign, and transfer employees; and provided,  
151 further, that the scope of arbitration in firefighter matters shall not  
152 include the right to appoint and promote employees. Assignments  
153 shall not be within the scope; provided, however, that the subject  
154 matters of initial station assignment upon appointment or promo-  
155 tion shall be within the scope of arbitration. The subject matter of  
156 transfer shall not be within the scope of arbitration, provided how-  
157 ever, that the subject matters of relationship of seniority to trans-  
158 fers and disciplinary and punitive transfers shall be within the  
159 scope of arbitration. Notwithstanding any other provisions of this  
160 chapter to the contrary, no municipal employer shall be required  
161 to negotiate over subjects of minimum manning of shift coverage,  
162 with an employee organization representing municipal police offi-  
163 cers and firefighters.

164 The commencement of a new municipal finance year prior to  
165 the final awards by the arbitration panel shall not be deemed to  
166 render a dispute moot, or to otherwise impair the jurisdiction or  
167 authority of the arbitration panel or its award. Any award of the  
168 arbitration panel may be retroactive to the expiration date of the  
169 last contract.

170 If a municipal employer, or an employee organization willfully  
171 disobeys a lawful order of enforcement pursuant to this section, or  
172 willfully encourages or offers resistance to such order, whether by  
173 strike or otherwise, the punishment for each day that such con-  
174 tempt continues may be a fine for each day to be determined at the  
175 discretion of said court.

176 Each of the parties shall provide compensation for the arbitrator  
177 which he has selected pursuant to this section. The remaining  
178 costs of arbitration proceedings under this section shall be divided  
179 equally between the parties. Compensation for the arbitrators shall  
180 be in accordance with a schedule of payment established by the  
181 American Arbitration Association.

182 No member of a unit of municipal police officers or firefighters  
183 who is employed on a less than full-time basis shall be subject to  
184 the provisions of this section.